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7 **BEFORE THE PUBLIC DISCLOSURE COMMISSION**
8 **OF THE STATE OF WASHINGTON**

9
10 IN RE THE MATTER OF ENFORCEMENT
ACTION AGAINST

11 DON BIVENS, MARILYN WESTLAKE,
12 AND MARTY JAMES,

13 Respondents.
14
15

PDC CASE NO. 02-286

HEARING BRIEF OF
RESPONDENT MARTY JAMES,
CLARK FIRE DISTRICT #5
ADMINISTRATOR

16 COMES NOW the Respondent Marty James, by and through his counsel, and
17 respectfully submits the following brief for the Commission hearing scheduled on February 22,
18 2005 at 1:00 p.m.

19 I. ALLEGATIONS AGAINST RESPONDENT JAMES

20 The staff has alleged that Mr. James has violated the provisions of RCW 42.17.130 by
21 the following limited conduct:

22 A. That Mr. James authorized the production, and approved the content of three issues
23 of a newsletter, *Lifeline*, and a fact sheet that “as a group” promoted a February 2000 ballot
24 measure;

25 B. That the cost of the newsletters was paid in part by Clark County Fire District #5;
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1 C. That the newsletters and fact sheet were not a fair and objective presentation of the
2 facts;

3 D. That “they” (the newsletters and fact sheet) contained promotional statements and
4 inflammatory images.

5 Mr. James responds that the newsletters were a normal and regular part of the Fire
6 District’s efforts to provide information to persons residing within the District boundaries, and
7 that the documents were not “promotional” or “inflammatory”.

8 9 II. FACTS AND CIRCUMSTANCES

10 The facts will show that, while the Vancouver Fire Department and Clark County Fire
11 District #5 have a written agreement for provision of services in the greater Vancouver area
12 since 1994, they are distinct and separate entities. The two have completely different staffing,
13 management and facilities. The City of Vancouver Fire Department does not have any direct
14 supervision or control over Mr. James; the Clark County Fire District has no control or
15 supervision over Respondents Don Bivens or Marilyn Westlake. Mr. Bivens and Ms. Westlake
16 are employees of the City of Vancouver, and the Vancouver Fire Department, only.

17 The numerous allegations against Mr. Bivens and Ms. Westlake regarding videos, use
18 of City property, press releases, etc., even if true, cannot be attributed to Mr. James.

19 The fact is that the Clark County Fire District has a long history of publishing regular
20 newsletters and brochures for the information and education of its constituents. This
21 information was either ignored or disregarded by the Commission investigator, who makes no
22 mention of it in her case log. As far back as 1985, the Fire District was publishing a regular
23 newsletter, the *5 Alarmer*. Through the time of the 1994 consolidation with the Vancouver
24 Fire Department, the District published twice yearly newsletters, *News at Five*.

1 After the consolidation with the City Fire Department, the District published *News at Five* on
2 an annual basis through 1997. The publication was reduced to once a year because of budget
3 constraints, and publication was cancelled in 1998 and 1999 due to lack of available funds.

4 The *News at Five* contained information, photographs, and articles about fire
5 prevention and services. It also addressed issues of department funding, facilities, and
6 staffing.

7 When Mr. James became the administrator for the Fire District in June, 2000, he
8 believed that communication with the District's constituents was a priority. He had been an
9 officer in the District's Fire Department before 1994, and was aware of the public support for
10 fire services that resulted from regular contact and information. Mr. James believed that it was
11 important to renew those contacts and resumed publication of *News at Five*, as well as a new
12 joint publication with the City Fire Department, *Lifeline*. Since 2000, *News at Five* has been
13 published once a year by the District, except for 2004. In 2004, a special publication was
14 created to acknowledge the District's 50th Anniversary, which was titled *50 Years of Five*.

15 When Mr. James approached Chief Bivens in the summer of 2000 about producing and
16 publishing a joint publication in 2000, it was not directly related to supporting a levy ballot
17 measure. Since 1994, the demand for fire services had raised sharply, and this included a
18 disproportionate amount of call for medical emergency services rather than a "fire" response.
19 Unfortunately the resources, staffing and facilities to address these needs had not kept pace
20 with the demand. These facts were not debatable, and presented a challenge to both the City
21 and Fire District.

22 Whatever solution was developed to address these needs, Mr. James knew that the
23 public would have to be informed of current needs and possible solutions. With that in mind,
24 he proposed a regular joint publication for the District and the City Fire Department, which
25 became the *Lifeline*. An agreement was reached for funding the publication on an alternate
26 issue basis prior to any decision for specific content, levy funding, or a February ballot issue.

1 In Mr. James' mind, it was to be a supplement to *News at 5* that would reach all constituents
2 within the joint service area, providing them with information related to fire protection and
3 services. There was no written agreement regarding the publication of the *Lifeline*, and it was
4 to be created on an informal basis.

5 As it developed, the *Lifeline* issues were written, edited, reviewed and published by the
6 staff at the City Fire Department. Mr. James did not write any of the articles or include any
7 letters from himself or the Fire District. While the District had a probable "veto power" for
8 any particular issue, it was limited to a review of final product.

9 It was Mr. James' information and belief that the City had taken appropriate measures
10 prior to publishing *Lifeline* issues to insure compliance with all related laws, including review
11 and approval of by staff at the City attorney's office.

12 Mr. James did review the issues prior to their publication and did not find them to be
13 inflammatory or promotional. The issues presented an accurate assessment of the service
14 levels, response data, and projected remedies to address the problems facing both the City and
15 District fire services. The issues of *Lifeline* were created and published one at a time, not "as a
16 group" and Mr. James did not review them "as a group" prior to their publication. Mr. James
17 took reasonable and good faith efforts to comply with the statute.

18 III. AUTHORITIES

19 The allegations against Mr. James are based upon an application of RCW 42.17.130.
20 As the Commission knows, the statute prohibits the authorization or use of "any of the
21 facilities of a public office or agency..." for the purpose of promotion of "...any ballot
22 proposition." *RCW 42.17.130* However, the statute and related provisions of the Washington
23 Administrative Code provide that the statute does not apply to action which "...are part of the
24 normal and regular conduct of the office or agency." *RCW 42.17.130(3); WAC 390-05-271(b)*

25 Mr. James involvement with the publication of *Lifeline* was within the normal and
26 regular conduct of his office and the past practice of Fire District #5.

1 The Commission has recognized that it is the right and the responsibility of local
2 government "...to inform the general public of the operational and maintenance issues facing
3 local agencies." *PDC Guidelines 04-02*

4 From the standpoint of District #5 and Mr. James, the publication of the *Lifeline* issues
5 and the *Fact Sheet* were information to the public which addressed the issues and potential
6 solutions to the pressing operational and maintenance issues facing the fire services.

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8 For all of the reasons stated above, the Public Disclosure Commission should dismiss
9 the Administrative Charges against Mr. Marty James.

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11 Respectfully Submitted this 10th day of February, 2005.

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14 Thomas Burke WSBA# 6577
15 Attorney for Respondent Marty James
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